

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2009

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Craig R. Nicol
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO SCP-JTL STONEHOUSE OWNER 2 LLC FOR THE STONEHOUSE TRACT 3 DEVELOPMENT UNPERMITTED ACTIVITY

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and SCP-JTL Stonehouse Owner 2 LLC, regarding the Stonehouse Tract 3 Development, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Compensation" or "Compensatory Mitigation" means (i) the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, or in certain circumstances preservation of aquatic resources or (ii) in certain circumstances an out-of-kind measure having a water quality, habitat, or other desirable benefit for the purposes of offsetting unavoidable adverse impacts to aquatic resources that remain after all appropriate and practicable avoidance and minimization has been achieved.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Impacts" means results caused by those activities specified in § 62.1-44.15:20A of the Code of Virginia.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
8. "Palustrine" means the palustrine system which includes all nontidal wetlands dominated by trees, shrubs, persistent emergent, emergent mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean-derived salts is below 0.5%.
9. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344).
10. "Property", "Parcel" or "Site" means the Stonehouse Tract 3 Development located in James City County, Virginia.
11. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 et seq.
12. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered, or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
14. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
15. "Stonehouse" means SCP-JTL Stonehouse Owner 2 LLC, a limited liability company authorized to do business in Virginia. Stonehouse is a "person" within the meaning of Va. Code § 62.1-44.3.
16. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
17. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VWP" means Virginia Water Protection Permit as defined in 9 VAC 25-210-10.

21. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Stonehouse is developing land in James City County, Virginia, that it has designated as Tract 3, which once complete will be a housing development ("Property"). The Property contains nontidal palustrine forested wetlands and intermittent streams, which are surface waters of the Commonwealth.
2. On July 13, 2018, the DEQ received notification from James City County ("County"), who is the delegated authority to administer the stormwater program at the Property, that evidence of several sediment discharges was observed in wetlands at the Property.
3. On July 27, 2018, DEQ staff conducted an inspection of the Property to determine compliance with the State Water Control Law and the Regulations. During this inspection and subsequent records review DEQ staff observed the following:
 - a. Multiple areas where sediment was discharged into streams and adjacent palustrine forested wetlands from cleared and un-stabilized areas in parcels A and B of the Property.
 - b. DEQ files do not indicate that a VWP Permit had been issued authorizing the impacts observed at the Property.
4. 9 VAC 25-210-50(A) states, "Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; excavate in wetlands; or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions."
5. Va. Code § 62.1-44.5(A) states, "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or

impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions...”

6. Va. Code § 62.1-44.15:20(A) states, “Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”
7. On September 12, 2018, DEQ issued NOV No. 1808-000804 to Stonehouse for the unpermitted impacts to wetlands and streams, described in C(3) - (6), above.
8. On October 3, 2018, DEQ staff met with representatives of Stonehouse at the Property. During this meeting DEQ requested that Stonehouse provide a written response to the NOV, with a detailed survey of all impacted wetlands and streams, and a plan to address the sediment discharges.
9. On October 31, 2018, Stonehouse provided DEQ a written response (“Response”) to the NOV. The response stated that based upon their fieldwork and analysis of the site, approximately 0.85 acres of palustrine forested wetlands and 2,021 LF of streams were impacted by the sediment discharges. The Response also described what measures Stonehouse has taken and will take to decrease the likelihood of future sediment discharges and provided a preliminary plan for sediment removal and restoration monitoring in the impacted areas. In the Response Stonehouse also submitted a proposed Corrective Action Plan (“CAP”) for the restoration of state waters on the Property at Pod A3 and B1, which has been reviewed and approved by DEQ subject to finalization of this Order.
10. Based on the results of the July 27, 2018, DEQ inspection and subsequent file review, the Board concludes that Stonehouse has violated 9 VAC 25-210-50(A), Va. Code § 62.1-44.5(A), and Va. Code § 62.1-44.15:20(A), as described in paragraphs C(3) – C(6), above.
11. In order for Stonehouse to complete its return to compliance, DEQ staff and representatives of Stonehouse have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Stonehouse, and Stonehouse agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$34,125 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Stonehouse shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Stonehouse shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Stonehouse for good cause shown by Stonehouse, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 1808-000804, dated September 12, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility for matters not contemplated in this Order and arising from facts or occurrences after the execution date of this Order; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Stonehouse admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Stonehouse consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Stonehouse declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Stonehouse to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. Stonehouse does not waive any rights or objections it may have in any enforcement

actions by federal, other state or local authorities arising out of the same facts or facts similar to those recited in this Order.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Stonehouse shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Stonehouse shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Stonehouse shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Stonehouse. Nevertheless, Stonehouse agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Stonehouse has completed all of the requirements of the Order;
 - b. Stonehouse petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Stonehouse.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Stonehouse from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any documents to be submitted pursuant to this Order shall be submitted by Stonehouse or an authorized representative of Stonehouse.
13. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
14. By its signature below, Stonehouse voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16 day of October, 2019



Craig Nicol, Regional Director
Department of Environmental Quality

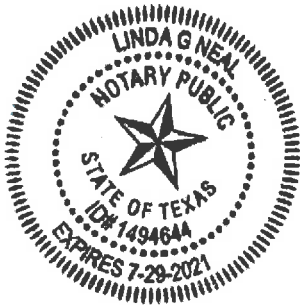
----- (Remainder of Page Intentionally Blank) -----

Stonehouse voluntarily agrees to the issuance of this Order.

Date: 6-26-2019 By: David Lane AUTHORIZED REPRESENTATIVE
(Person) (Title)
SCP-JTL Stonehouse Owner 2 LLC

STATE OF TEXAS
~~Commonwealth of Virginia~~
City/County of DALLAS

The foregoing document was signed and acknowledged before me this 26 day of JUNE,
2019, by DAVID A. LANE who is AUTHORIZED of SCP-JTL Stonehouse Owner 2 LLC, on behalf
of the company. REPRESENTATIVE



Linda G. Neal
Notary Public

1494644

Registration No.

My commission expires: 7-29-2021

Notary seal:

APPENDIX A

SCHEDULE OF COMPLIANCE

1. No later than 60 days after the effective date of this Order, Stonehouse shall begin implementation of the Corrective Action Plan in accordance with the schedule contained therein. Any changes to the approved final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. Stonehouse shall complete the CAP in accordance with its terms.
 - a. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then Stonehouse shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, Stonehouse shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by Stonehouse in accordance with the schedule set forth in the alternative CAP.
 - b. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by December 31, 2023, or by the end of the last monitoring period, as specified in the Final CAP or any alternative CAP, and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then Stonehouse shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. Stonehouse shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Stonehouse shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.
2. Unless otherwise specified in this Order, Stonehouse shall submit all requirements of Appendix A of this Order to:

Enforcement
DEQ – Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462